

E. The Procuracy

In addition to the courts and arbitration tribunals which may be involved in the direct resolution of disputes related to business activities, there are a number of other state bodies that may play an important role. One of these is the Procuracy — the general prosecutor's office. This body has broad powers and may become involved in the activities of businesses and in their disputes not only through its role as prosecutor in criminal cases and in actions to enforce civil fines and penalties, but also through its powers of “supervision” over observance of the laws and its capacity to intervene in court cases and to reopen a decision by “protesting” (appealing) it to a higher court.

1. What is the Procuracy?

The procuracy existed in various forms for several centuries before the revolution, serving at some times primarily as the public prosecutor for criminal cases, and at others as a supervisory institution designed to ensure that the various bodies and officials of the state observed the laws. Abolished along with the courts immediately following the revolution, it was recreated in 1922. It was an institution independent from other government bodies, with strict internal vertical subordination. Although its specific powers and duties shifted somewhat, the basic functions of the procuracy remained unchanged throughout most of the Soviet period, and consisted of the supervision of legality of actions of state bodies below the highest level and of the behavior of enterprises, institutions and citizens, and also supervision of legality in the conduct of trials and cases by courts and of the observance of legal rules in prisons. In addition to these extremely broad supervisory powers, the procurator also served the function of the “state accuser” or prosecutor in criminal cases for much of the Soviet period.

The primary tool of the procuracy in fulfilling its tasks was the bringing of “protests” — complaints or statements concerning a violation of the requirements of law — to a person, state body or enterprise, or to their superiors. The person or body to whom the protest was addressed was generally required to make some answer regarding measures taken to alleviate the problem or to explain their disagreement with the procurator’s conclusion. If satisfaction was not received at one level, the procurator had the right to continue to protest up the chain of superior bodies all the way to the level of the highest state bodies of the USSR.

The procuracy’s powers with respect to economic activity were broad. Through its powers of “general supervision,” the procuracy had the authority to review activities and records of enterprises, to require oral and written explanations concerning possible violations, and to issue recommendations on the elimination of violations, or in some cases mandatory instructions.²⁸ If grounds for criminal, administrative or disciplinary proceedings existed, the procurator could issue a decree requiring their initiation, and in more recent years could also file a claim in state arbitrazh.

The procuracy’s powers were not limited to major violations of the law and the procurators could and did exercise their powers of recommendation and protest to address such matters as labor discipline, managerial incompetence or errors, and waste or lack of efficiency. The law did not limit the procuracy’s powers to state bodies, and specifically included citizens (individuals) in the procuracy’s powers of supervision. Thus, as non-state forms of enterprise began to expand, the right to review all business records, demand information from entities and individuals, and to take action concerning any problems found extended to new private businesses and individual entrepreneurs as well as to state entities.

In addition to its “general supervision” powers over economic actors, the procuracy also had a significant role in economic disputes resolved through the courts or state arbitrazh. Through its powers of supervision over legality in the courts, the procuracy had the right and responsibility to supervise the behavior of judges and state arbiters and their proper conduct of cases. If problems or errors were detected, the procurator could notify the superiors of the judge or state arbiter involved. In addition, the procuracy conducted reviews of case decisions and frequently filed “protests” requesting the reconsideration of decisions believed wrongly decided. It was not required that the procurator have been a party to the case for a protest concerning the decision to be filed, nor that a particular public or social interest be at stake, but only that the procurator consider the decision incorrect as a matter of law.

²⁸ The authority to issue mandatory instructions concerned violations that were likely to cause immediate harm, and therefore could not wait for a protest to be considered and acted upon. This authority was given to the procuracy at a relatively late stage, by amendments enacted in 1987.

2. Current “Supervision” Powers of the Procuracy

In 1992, a new law on the Procuracy was passed,²⁹ which was extensively revised in 1995³⁰ after the passage of the 1993 Constitution. The nature and stated goals of the several types of procuracy supervision have been changed and the powers of “general supervision” substantially reduced. Nonetheless, the Procuracy remains an important and powerful part of the legal system and may play a number of possible roles in relation to commercial activities and commercial disputes.

Under the current version of the law, the procuracy’s power of supervision over the execution of the laws (previously referred to as “general supervision”) has been reduced to apply only to state bodies.³¹ General supervision over the execution of the laws by commercial entities and individuals is no longer within the procurator’s sphere of authority. With respect to state bodies, the procurator has the right to submit protests concerning acts or actions which violate the law. A protest must be considered within a 10 day period from the day of its receipt, and the results of the consideration immediately sent to the procurator in written form. The procurator also has the power to submit a “representation” concerning the elimination of violations of the law or of the conditions or reasons giving rise to them. A representation is subject to immediate consideration by the body or official receiving it and concrete measures must be taken within a month to eliminate the problem and its causes, about which the procurator must be informed in writing.

In addition to protests and representations, the procurator has the authority to issue a decree concerning violations of the law by individual officials and the need to impose administrative or criminal liability on them. The decree is submitted to the body which has the power to impose such liability and the procurator is informed of the results of the consideration of the decree in writing. The procurator does not have the right to exercise these powers with respect to the Government of the Russian Federation, but the Procurator General is obligated to inform the President of the Russian Federation concerning instances in which the acts of the Government are not in accord with the Constitution or laws of the Russian Federation.

²⁹ Law of the Russian Federation “On the Procuracy of the Russian Federation,” *Vedomosti Verkhovnogo Soveta RF*, 1992, No. 8, Item 366.

³⁰ *Sobranie Zakonodatel’sstva RF*, 1995, No. 47, Item 4472. Some additional changes in the Law on the Procuracy were made very recently, most of which concerned the terms and conditions of service in the procuracy. See the Law of the Russian Federation “On the Introduction of Changes and Additions into the Federal Law “On the Procuracy of the Russian Federation,” *Sobranie Zakonodatel’sstva RF*, 1999, No. 7, Item 878.

³¹ Supervision powers now apply only to federal ministries and departments, the representative and executive bodies of the subjects of the Federation, bodies of local self government, military administration bodies and bodies of state control (i.e. administrative bodies and those serving inspection and similar functions), and their officials.

A second type of supervision now exercised by the procuracy is supervision over the observance of the rights and freedoms of the person and the citizen.³² This supervision extends to all of the state and local bodies to which general supervision applies, and also to the administrative bodies of commercial and non-commercial organizations. The rights and freedoms which are to be protected are primarily those included in the Constitution, such as the right to freely dispose of one's talents and labor capacity, freedom of movement, freedom of assembly and other rights. With respect to these issues, the procurator is to consider complaints and petitions, and may initiate a criminal case if a violation of rights involves criminally punishable actions. The procurator may also forward materials for the initiation of an administrative case, and may file suit in a court of general jurisdiction or in an arbitrazh court to protect the rights of those who cannot themselves file suit or of large groups of persons. The procurator also has the protest and representation powers described above. The law currently in effect specifically provides that the procurator is not to substitute for other state bodies nor to interfere in the economic activities of organizations.³³

3. Current Authority of the Procuracy Respecting Court Cases

In addition to its supervision functions, the Procuracy retains a significant role in court consideration of particular cases. ***The procurator has the right to make petitions or bring suit in a wide variety of cases, where this is specifically envisioned by the relevant legislation and is necessary to protect the rights of citizens or the interests of the state or society.***³⁴ The procurator can intervene as an additional party in already existing cases for the same purposes. The specific rights of the procurator in each instance are defined by the general procedural legislation related to the court in which the actions occur, and may also be defined by the substantive legislation governing the case involved. In cases being heard in the courts of general jurisdiction, the procurator may submit a conclusion or representation concerning the case to the court, without otherwise participating in the case as a party or third party. The procedural legislation governing the arbitrazh courts does not permit the procurator to submit conclusions, but the procurator may still file cases where this is permitted by the substantive legislation and may enter existing cases as a third party for the purpose of protecting the interests listed above.

In addition to its rights to initiate or participate in court cases, the procurator continues to have significant authority with respect to appeals of court decisions. ***A procurator or deputy procurator may bring a cassational protest (concerning violations of substantive or procedural law) concerning any decision, sentence, determination or***

³² Articles 26-28 of the Law on the Procuracy.

³³ Article 26, part 2. The Procuracy also retains, under the current legislation, its supervisory powers over bodies conducting search and investigation activities related to criminal cases and over prisons, camps and other places where people are kept under guard or serve sentence. (Chapters 3 and 4 of the Law on the Procuracy.) Since this power has little relationship to commercial disputes it will not be discussed further here.

³⁴ Article 35 of the law on the Procuracy.

*decree of a court that he or she considers to be illegal or without sufficient basis.*³⁵

Such a protest has the same effect as the filing of a cassational appeal by a party, and generally leads to the reconsideration of the case by the cassational court. It is not necessary that the procuracy have taken any part in the case in the lower court and the procurator may file such a protest independent of the wishes of the parties in the case. Procurators may also demand from the court the case materials of any case in which the decision has entered into legal force, or the files on an entire category of cases, for review. If the decisions are believed to be illegal or without sufficient basis, the procurator may bring a protest requesting their review in supervisory proceedings.³⁶ These powers give the procuracy a potentially significant role in almost any court case, including those concerning commercial matters.